

**BEFORE THE HEARING PANEL
EMPOWERED BY THE
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION**

IN THE MATTER OF :)	
)	
,)	
)	
Petitioner)	
v.)	
)	
ST. LOUIS CITY SCHOOL DISTRICT,)	
)	
Respondent)	
<u>COVER SHEET</u>		

1. (“Student”) is the son of (“Parent”). Student was born on. Student’s School District Identification Number is .
2. The Student and Parent were not represented.
3. The St. Louis City School District (“District”) was represented by:

Margaret M. Mooney
Lashley & Baer, P.C.
714 Locust Street
St. Louis, MO 63101
4. Student’s Mother requested due process by letter to the Department of Elementary and Secondary Education (“DESE”) dated March 3, 2003 which was received by DESE on March 3, 2003. The original deadline for mailing the decision in this matter was April 17, 2003.
5. District requested an extension of the time lines through June 16, 2003 by letter dated March 18, 2003. The Hearing Chairperson extended the time lines to June 16, 2003 by letter dated March 21, 2003.
6. The hearing in this matter was conducted on June 9, 2003 in St. Louis, Missouri.

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IN THE MATTER OF :

Petitioner

v.

ST. LOUIS CITY SCHOOL DISTRICT,

Respondent

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
DECISION AND ORDER**

The Hearing Panel, after conducting the due process hearing in this matter on June 9, 2003 issues the following Findings of Fact, Conclusions of Law, Decision and Order:

I. FINDINGS OF FACT

The Hearing Panel makes the following Findings of Fact:

A. The Parties

1. (“Student”) attends Scullin Elementary School in the St. Louis City School District (“District”).
2. Student’s Mother (“Parent”) and Student have, during all times material to this proceeding resided within the boundaries of the District. Parent is literate and her primary mode of communication is English.
3. The District is a Missouri Metropolitan school district organized pursuant to Missouri Statutes.
4. Neither Student nor Parent were represented during the processing of this matter or at the hearing. Prior to the hearing the Parent was provided with *The Procedural Safeguards for Children and Parents*.
5. The District was represented by Margaret M. Mooney, Lashley & Baer, P.C., 714 Locust Street, St. Louis, MO 63101.
6. The Hearing Panel for the due process proceeding was:

Ransom A Ellis, III, Hearing Chairperson
Ms. Leora Andrews, Panel Member
Mr. George Wilson, Panel Member

B. Procedural Background

7. On or about March 3, 2003, the Parent sent a letter to DESE requesting a due process hearing. (HP Exh 1) The request for the due process hearing was received by DESE on March 3, 2003.

8. On or about March 3, 2003 Ms. Pam Williams, Director for Special Education Compliance at DESE notified the Parent (HP Exh 2) that her due process request had been received and that she need to select a hearing panel member for the requested due process hearing.

9. On or about March 14, 2003 Ms. Pam Williams, selected a hearing panel member for the Parent because she had not provided a name to Ms. Williams as requested in Ms. Williams' March 3, 2003 letter.

10. On or about March 14, 2003 Ms. Williams notified the Hearing Chairperson (HP Exh 3) and the Hearing Panel Members (HP Exh 4) that they had been selected to serve on the hearing panel for the Parent's Request for Due Process.

11. On or about March 21, 2003 the Hearing Chairperson provided the Parent with a copy of the *Procedural Safeguards for Parents and Children* (HP Exh 6). The Hearing Chairperson also notified the parties that the due process hearing had to be held, and a written decision rendered by, April 17, 2003. (HP Exh 7).

12. On or about March 18, 2003 Counsel for the District requested that the time lines for the decision be extended. through June 16, 2003. (HP Exh 5). On March 21, 2003 the Hearing Chairperson extended the time lines in this case to and through June 16, 2003. (HP Exh 8).

13. On April 14, 2003 the Hearing Chairperson issued a Notice of Hearing setting this matter for hearing on June 9, 2003, at 9:00 o'clock a.m. at Scullin Elementary School, 4160 N. Kingshighway Blvd., St. Louis, Missouri. (HP Exh 10). The Notice also scheduled a pre-hearing telephone conference for June 4, 2003 at 10:00 a.m. The Notice was sent to the Parent by regular United States Mail. The Notice was received by the Parent.

14. On May 16, 2003 the District filed *Respondent St. Louis Public School District's Motion For More Definite Statement and Motion to Dismiss*.

15. On June 2, 2003 the Hearing Chairperson issued a First Amended Notice of Hearing which changed the starting time of the due process hearing from June 9, 2003 at 9:00 a.m. to

June 9, 2003 at 1:00 p.m. (HP Exh12). The Notice also reaffirmed that the scheduled pre-hearing telephone conference would take place on June 4, 2003 at 10:00 a.m. The Notice was sent to the Parent by regular mail and a copy of the Notice was placed in the Student's backpack by District personnel on or around June 2, 2003. The Parent received the Notice.

16. On June 2, 2003 the District provided the Hearing Chairperson and Panel Members with a list of witnesses and copies of its exhibits as required by 34 C.F.R. §300.508 and the Missouri State Plan. The Parent did not provide a list of witnesses or copies of any exhibits, except those which were attached to the request for due process which was filed on March 3, 2003.

17. On June 4, 2003 the Hearing Chairperson attempted to contact the Parent by telephone for the pre-hearing telephone conference. A telephone call was placed to the telephone number provided by the Parent. A woman answered the telephone and identified herself as the Grandmother of the Student and indicated that the Parent was not there at that time, but would return around 2:00 p.m. The Hearing Chairperson explained who he was to the Student's Grandmother and informed her that he would call that afternoon between 2:00 and 2:30 p.m. The Hearing Chairperson left his telephone number with the Student's Grandmother. Around 2:20 p.m. on June 4, 2003, the Hearing Chairperson again telephoned the home of the Parent but the telephone was not answered.

18. On June 9, 2003 the due process hearing was convened at 1:00 p.m. at Scullin Elementary School, 4160 N. Kingshighway Blvd., St. Louis, Missouri. Present were the Hearing Chairperson and Hearing Panel Members; Counsel for the District and Administrators and witnesses for the District. The Parent did not appear. The parties waited until 1:30 p.m. before beginning the hearing without the Parent.

19. During the hearing Exhibits were introduced and received into evidence. Hearing Panel Exhibits 1 through 12 were admitted and made a part of the record in this case.

C. Time Line Information

20. On or about March 3, 2003, the Parent sent a letter to DESE requesting a due process hearing. (HP Exh 1) The request for the due process hearing was received by DESE on March 3, 2003. Accordingly, the due process hearing had to be held, and a written decision rendered by, April 17, 2003.

21. On or about March 18, 2003 Counsel for the District requested that the time lines for the decision be extended. through June 16, 2003. (HP Exh 5). On March 21, 2003 the Hearing Chairperson extended the time lines in this case to and through June 16, 2003. (HP Exh 8).

D. The Issues And Relief Requested

22. The Parent's Request for Due Process (HP Exh 1) lists several alleged issues that she wished to have presented to the Hearing Panel. These issues are as follows:

- (Issue 1) Whether a substitute teacher with the District improperly supervised the Student on or around November 6, 2001 when he allowed the Student to walk home with another child.
- (Issue 2) Whether the District violated the Civil Rights of the Student by losing his school pictures and by not providing appropriate supervision for him.
- (Issue 3) Whether the District failed to return information about the Student to the Social Security Office in connection with the Student's claim for disability benefits.
- (Issue 4) Whether the Student was properly identified and evaluated by the District.
- (Issue 5) Whether the Student's IEP was properly and timely prepared by the District.
- (Issue 6) Whether the Student received the Occupational Therapy specified in his IEP.
- (Issue 7) Whether the Student made progress on the goals and objectives set forth in his IEP during school year 2002-2003.

23. The Parent stated no proposed remedy in her Request for Due Process.

24. In *Respondent St. Louis Public School District's Motion For More Definite Statement and Motion to Dismiss*, the District asked the Hearing Panel to dismiss Issues (1) through (3) because they do not arise out of the Individual with Disabilities Education Act or the State Plan.

E. Background Facts

25. The Parent made no apparent effort to comply with the request of DESE to select a Hearing Panel Member. The Parent did not submit a list of witnesses or copies of the exhibits she intended to introduce at the hearing. The Parent made no effort to contact the Hearing Chairperson to discuss her Request and did not make herself available for the pre-hearing telephone conference on June 4, 2003. The Parent did not attend the hearing or provide any input into the issues raised by her in her Request for Due Process other than the information which was attached to the Request. (HP Exh 1). The Parent presented no evidence at the hearing.

II. CONCLUSIONS OF LAW

26. The Student is a “child with a disability,” as that term is defined in the IDEA, its regulations, 34 C.F.R. §300.7 and the State Plan.
27. The District is a Missouri Metropolitan school district organized pursuant to Missouri Statutes.
28. The Student is now and has been a resident of the District during all times relevant to this due process proceeding, as defined by Section 167.020 RSMo.
29. The IDEA, its regulations and the *State Plan for Part B of the Individuals With Disabilities Education Act* (2002), (“State Plan”) set forth the rights of students with disabilities and their parents and regulate the responsibilities of educational agencies, such as the District in providing special education and related services to students with disabilities.
30. The State Plan was in effect at all material times during this proceeding. The State Plan constitutes regulations of the State of Missouri which further define the rights of students with disabilities and their parents and regulate the responsibilities of educational agencies, such as the District, in providing special education and related services to students with disabilities.
31. The purpose of the IDEA and its regulations is: (1) “to ensure that all children with disabilities have available to them a free appropriate public education that includes special education and related services to meet their unique needs”; (2) “to ensure that the rights of children with disabilities and their parents are protected”; and, (3) “to assess and ensure the effectiveness of efforts to educate those children.” 34 C.F.R. § 300.1.
32. The IDEA requires that a disabled child be provided with access to a “free appropriate public education.” (“FAPE”) *Board of Education of the Hendrick Hudson Central School District, Board Of Education, Westchester County v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034, 3049, 73 L.Ed.2d 690 (1982). The term “free appropriate public education” is defined by 34 C.F.R. § 300.8 as follows:

“...the term ‘free appropriate public education’ means special education and related services that--

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including the requirements of this part;
- (c) Include preschool, elementary school, or secondary school education in the State involved; and,
- (d) Are provided in conformity with an IEP that meets the requirements of §§ 300.340--300.350.”

A principal component of the definition of FAPE is that the special education and related services provided to the student with a disability, “meet the standards of the SEA” (State Board of Education), and “the requirements of this part”. 34 C.F.R. Part 300.

33. If parents believe that the educational program provided for their child fails to meet this standard, they may obtain a state administrative due process hearing. 34 C.F.R. § 300.506; *Thompson v. Board of the Special School District No. 1*, 144 F.3d 574, 578 (8th Cir. 1998); *Fort Zumwalt School District v. Clynes*, 119 F.3d 607, 610 (8th Cir. 1997), *cert. denied* 523 U.S. 1137, 118 S.Ct. 1840, 140 L.Ed 2d 1090 (1998).

34. The IDEA is designed to enable children with disabilities to have access to a free appropriate public education which is designed to meet their particular needs. *O'Toole by O'Toole v. Olathe District Schools Unified School District No. 233*, 144 F.3d 692, 698 (10th Cir. 1998). The IDEA requires the District to provide a child with a disability with a “basic floor of opportunity. . . which [is] individually designed to provide educational benefit to the handicapped child.” *Rowley, supra.*, 102 S.Ct. 3034, 3047. In so doing the IDEA does not require that a school district “either maximize a student’s potential or provide the best possible education at public expense,” *Rowley, supra.*, 102 S.Ct. 3034, 3049; *Fort Zumwalt School District v. Clynes, supra.* 119 F.3d 607, 612; and *A.W. v. Northwest R-1 School District*, 813 F.2d 158, 163-164 (8th Cir. 1987). Likewise, the IDEA does not require a school district to provide a program that will, “achieve outstanding results”, *E.S. v. Independent School District No. 196*, 135 F.3d 566, 569 (8th Cir. 1998); that is “absolutely [the] best”, *Tucker v. Calloway County Board of Education*, 136 F.3d 495, 505 (6th Cir. 1998); that will provide “superior results,” *Fort Zumwalt School District v. Clynes, supra.* 119 F.3d 607, 613; or, that will provide the placement the parents prefer. *Blackmon v. School District of Springfield, R-12*, 198 F. 3d 648, (8th Cir. 1999); *E.S., supra.* 135 F.3d 566, 569. See also: *Tucker, supra.*, 136 F.3d 495, 505; and *Board of Education of Community Consolidated School District No. 21 v. Illinois State Board of Education*, 938 F. 2d 712, 716-17 (7th Cir. 1991).

35. The Hearing Panel does not have jurisdiction over Issues (1) through (3) raised in the Parent’s Request for Due Process in that they do not arise out of the IDEA or the State Plan.

36. The Parent has the burden of going forward with the evidence and the ultimate burden of proof on Issues (4) through (7) raised in the Parent’s Request for Due Process.

III. DECISION

37. Issues (1) through (3) – The Hearing Panel does not have jurisdiction over Issues (1) through (3) raised in the Parent’s Request for Due Process in that they do not arise out of the IDEA or the State Plan. For that reason, *Respondent St. Louis Public School District’s Motion For More Definite Statement and Motion to Dismiss* is granted with respect to Issues (1) through (3) and they are dismissed.

38. Issues (4) through (7) – After filing the Due Process Request on March 3, 2003 the Parent made no effort to participate in the processing of the Request, scheduling the hearing or any discussions concerning the issues to be presented at the hearing. The Parent did not attend

the hearing or send a representative. The Parent was totally non-communicative. The Parent did not present evidence at the hearing. Accordingly, the Parent has failed to meet her burden to go forward with the evidence and has failed to meet her burden of proof on Issues (4) through (7) and they are dismissed.

IV. ORDER

The request for due process is dismissed.

V. APPEAL PROCEDURE

PLEASE TAKE NOTICE that these Findings of Fact, Conclusions of Law, Decision and Order constitute the final decision of the Department of Elementary and Secondary Education in this matter and you have a right to request review of this decision pursuant to the Missouri Administrative Procedures Act, Section 536.010 *et seq.* RSMo. Specifically, Section 536.110 RSMo. provides in pertinent part as follows:

"1. Proceedings for review may be instituted by filing a petition in the circuit court of the county of proper venue within thirty days after the mailing or delivery of the notice of the agency's final decision....

3. The venue of such cases shall, at the option of the plaintiff, be in the circuit court of Cole County or in the county of the plaintiff or of one of the plaintiff's residence...

PLEASE TAKE NOTICE that you also have a right to file a civil action in Federal or State Court pursuant to the IDEA. See 34 C.F.R. §300.512.

Ransom A Ellis, III
Hearing Chairperson

Dated: June 16, 2003

Leora Andrews
Hearing Panel Member

George Wilson
Hearing Panel Member

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served upon each party to this action, to-wit:

(“Parent”)

Ms. Margaret M. Mooney
Lashley & Baer, P.C.
714 Locust Street
St. Louis, MO 63101

Pam Williams
Special Education Legal Services
Department of Elementary and
Secondary Education
Post Office Box 480
Jefferson City, MO 65102-0480

by depositing same in the United States mail at Springfield, Missouri, postage prepaid,
duly addressed to said parties on this _____ day of June, 2003.

Ransom A Ellis, III
Hearing Chairperson